

Form 765

**Terms and Conditions
of Purchase**

November 2002

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

"A" Clauses Apply to Subcontracts at All Dollar Levels

Definitions

As used in this form, the following terms have the meanings stated:

- (a) *Government Contracting Officer* — a representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.
- (b) *DEAR* — The Department of Energy Acquisition Regulation.
- (c) *DOE* — The United States Department of Energy.
- (d) *FAR* — The Federal Acquisition Regulation.
- (e) *Goods* — All tangible property, except land or interest in land, and including tooling, equipment, materials supplies, etc., used in connection with a subcontract.
- (f) *Government* — The government of the United States of America.
- (g) *Subcontract* — A subcontract is a legally binding agreement issued under the Prime Contract and between the Laboratory and a third party that contains the essential terms and conditions under which goods or services will be furnished to the Laboratory.
- (h) *Subcontractor* — The party entering into the subcontract with The Regents of the University of California.
- (i) *Lower-tier subcontractor* — An individual or legal entity that has entered into an agreement with a Subcontractor for the delivery of goods or services necessary for the Subcontractor's performance of the subcontract.
- (j) *University* — The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 with the Department of Energy.
- (k) *University's procurement specialist* — The representative of the University of California authorized to address contractual issues, and execute and/or administer subcontracts on behalf of Los Alamos National Laboratory.

Preamble

- (a) Pursuant to the terms of Contract W-7405-Eng-36, the University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, the University is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.
- (b) The Subcontractor shall furnish the goods and/or services covered by the subcontract subject to all the terms and conditions set forth in the subcontract including the following, which the Subcontractor, in accepting the subcontract, agrees to be bound by and to comply with in all

particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance of shipment of all or any portion of goods or the performance of all or any portion of the services covered by the subcontract shall constitute unqualified acceptance of all University terms and conditions. The terms of any quotation referred to in the subcontract are included and made a part of the subcontract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the subcontract.

- (c) This form incorporates one or more FAR and/or DEAR clauses by reference. The version of the FAR and/or DEAR clause in effect as of the effective date of the subcontract shall apply with the same force and effects as if they were given in full text. Upon request, the procurement specialist will make the full text of the clauses available.

Clause A1 ³/₄ Antikickback Procedures

- (a) **Definitions.** "*Kickback*" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to the University, a University employee, a Subcontractor or lower-tier subcontractor, or the employee of a Subcontractor or lower-tier subcontractor for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract at any tier relating to the prime contract.

"*Person*" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"*Prime Contract*" means Contract W-7405-Eng-36 between the United States Department of Energy (DOE) and The University of California, Los Alamos National Laboratory (University) for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"*University employee*" means any officer, employee, or agent of the University.

"*Subcontract*" means a contract or contractual action entered into by the University or a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under the prime contract.

"*Subcontractor*" (1) means any person, other than the University, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the prime contract or under a subcontract entered into in connection with the prime contract and (2) includes any persons who offer to furnish or furnishes general supplies to the University or lower-tier subcontractor.

"*Subcontractor employee*" means any officer, partner, employee, or agent of a Subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 USC 51-58) (the Act) prohibits any person from
 - (1) Providing, attempting to provide, or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the subcontract price charged by the Subcontractor to the University, or in the subcontract price charged by a lower-tier subcontractor to the Subcontractor.

- (c) (1) The Subcontractor will have in place and follow reasonable procedures designed to prevent and detect possible violation of the Act in its own operations and in its direct business relationships in connection with the prime contract.
- (2) When the Subcontractor has reasonable ground to believe that a violation of the Act may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the Laboratory's Controller, or Laboratory's Counsel.
- (3) The Subcontractor shall cooperate fully with any investigation of a possible violation of the Act.
- (4) Regardless of the subcontract tier at which a kickback was provided, accepted or charged in connection with the prime contract in violation of the Act, the University may
 - (i) Offset the amount of the kickback against any monies owed by the University under the subcontract; and/or
 - (ii) Direct the Subcontractor to withhold from sums owed to a lower-tier subcontractor, the amount of the kickback. The University may direct that the monies withheld be paid to DOE or if DOE has offset the monies under the prime contract, paid to the University. In either case, the Subcontractor shall notify the University when monies are withheld.
 - (iii) Nothing in this clause precludes any contractual or common law remedy available to the University.
- (5) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5), in all lower-tier subcontracts under the subcontract.

Clause A2 ³/₄ Assignment of Claims

- (a) The subcontract or any right, remedy, or obligation hereunder is assignable in whole or in part by the University to the Government or its designee. Under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as the Act), the Subcontractor may assign its rights to be paid amounts due or to become due because of the performance of the subcontract to a bank, trust company, or other financial institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any bank, trust company, or other financial institution.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under the subcontract and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the subcontract.
- (c) The Subcontractor shall not furnish or disclose to any assignee under the subcontract any classified document, including the subcontract or information related to work under the subcontract until the University authorizes such action in writing.

Clause A3 ³/₄ Authorization and Consent

- (a) The Government authorizes and consents to all use and manufacture, in performing the subcontract at any tier of any invention described in and covered by a United States patent (1) embodied in the structure of composition of any clause, the delivery of which is accepted by

the University for the Government under the subcontract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with (i) specifications or written provisions forming a part of the subcontract or (ii) specific instructions given by the University's procurement specialist directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the Patent Indemnity clause, if any, included in the subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- (b) The Subcontractor agrees to include and require inclusion of this clause, suitably modified to identify the parties, in all lower-tier subcontracts for goods or services (including construction, architect-engineer services, goods, models, samples, and design or testing services) expected to exceed \$25,000; however, omission of this clause from any lower-tier subcontract under or over \$25,000 does not affect this authorization and consent.

Clause A4 ³/₄ Buy American Act - Supplies

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.
- (b) **Definitions.** *"Components,"* as used in this clause, means those goods incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraph (c)(2) or (c)(3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause means those goods to be acquired for public use under the subcontract.

- (c) The Subcontractor shall use only domestic end products, except those
 - (1) For use outside the United States;
 - (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) For which the applicable federal agency determines that domestic preference would be inconsistent with the public interest; or
 - (4) For which the applicable federal agency determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR.)

Clause A5 ³/₄ Changes

- (a) The University may at any time by written change order and without notice to the sureties, if any, make changes within the general scope of the subcontract in any one of more of the following:
 - (1) Drawings, designs, or specifications when the goods to be furnished are to be specifically manufactured for the University in accordance with the drawings, designs, or specifications.
 - (2) Method of shipping or packing.
 - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order, the University's procurement specialist shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.
- (c) The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written change order.
- (d) If the Subcontractor's proposal for adjustment includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

Clause A6 ³/₄ Collect Shipments

Goods purchased f.o.b. shipping point must be forwarded freight collect. (Note: Government freight rates do not apply to prepaid shipments. Excess costs will be deducted from the amount invoiced for the goods if the goods are not shipped collect in accordance with the following instructions). The following notation must appear on the bills of lading or express receipt:

"This shipment is for the account of the U.S. Government, which will assume the freight charges. It is subject to the terms and conditions set forth in the standard form of the U.S. Government's bill of lading and to any available special rates or charges."

Clause A7 ³/₄ Convict Labor, FAR 52.222-3 (Incorporated by Reference)

Clause A8 ³/₄ Covenant Against Contingent Fees

- (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain the subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul the subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

- (b) **Definitions.** *"Bona fide agency,"* as used in the clause, means an established commercial or selling agency, maintained by a Subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government or University subcontracts nor holds itself out as being able to obtain any Government or University subcontract(s) through improper influences.

"Bona fide employee," as used in this clause, means a person employed by a Subcontractor and subject to the Subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government or University subcontracts nor holds itself out as being able to obtain any Government or University subcontract(s) through improper influence.

"Contingent fee," as used in this clause, means any commission percentage fee, brokerage fee, or other fee that is contingent upon the success that a person or concern has in securing a Government or University subcontract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government or University employee or officer to give consideration or to act regarding a Government or University subcontract on any basis other than the merits of the matter.

- (c) **Lower-tier subcontracts.** Unless otherwise authorized by the University in writing, the Subcontractor shall cause provisions similar to the foregoing to be inserted in all lower-tier subcontracts entered into under this subcontract.

Clause A9 ³/₄ Declared Valuation of Shipments

Except as otherwise provided on the face of the subcontract, all shipments by the Subcontractor under the subcontract for the University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification, and the bill of lading shall so note it.

Clause A10 ³/₄ Delivery of Excess Quantities

The Subcontractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Subcontractor delivers and the University receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Subcontractor. The University may retain such excess quantities up to \$250 in value without compensating the Subcontractor therefore, and the Subcontractor waives all right, title, or interest therein.

Quantities valued in excess of \$250 will, at the option of the University, either be returned at the Subcontractor's expense or retained and paid for by the University at the unit price in the subcontract.

Clause A11 ³/₄ Discounts for Prompt Payment

- (a) Discounts for prompt payment will not be considered in the evaluation of quotations. However, any offered discount will form a part of the award, and will be taken if it is in the University's best interest to do so, and if payment is made within the discount period indicated in the quotation by the Subcontractor. As an alternative to offering a prompt payment discount in conjunction with the quotation, subcontractors awarded subcontracts may include prompt payment discounts on individual invoices.

- (b) In connection with any discount offered for prompt payment, time shall be computed from the latter of receipt of material or the date the invoice is received at the following address: Los Alamos National Laboratory, Accounts Payable, Mail Stop P240, P. O. Box 1663, Los Alamos, NM 87545. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the University check was dated or an electronic funds transfer payment was made.

Clause A12 $\frac{3}{4}$ Disputes

- (a) *Definitions.* For the purposes of this clause:

- (1) *Arbitration decision* means a decision of the Board in an arbitration pursuant to this clause.
- (2) *Board* means the Energy Board of Contract Appeals that has been established by the Secretary of Energy pursuant to § g(a)(1) of the *Contract Disputes Act of 1978*, 41 U.S.C. § 607(a)(1).
- (3) *Claim* means a written demand or written assertion by either contracting party seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a contract term, or other relief arising under or relating to this subcontract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. The Subcontractor may convert such submission into a claim if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by demanding a decision by the Procurement Manager.

- (4) *Counterclaim* means a claim asserted in a pleading filed with the Energy Board of Contract Appeals in an arbitration proceeding pursuant to this clause which claim arises from the same occurrence or transaction relating to this subcontract that is the subject matter of the opposing party's claim. Counterclaims do not need to be submitted to the Procurement Manager for decision.
 - (5) *Procurement Manager* means a person designated by the University to decide claims of the Subcontractor or of the University against the Subcontractor.
 - (6) *Rules of the Board* means the Board's rules promulgated at 10 C.F.R. Part 1023, Subpart A.
- (b) *Nature of this Subcontract.* This subcontract is not a Government contract and therefore is not subject to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The parties agree that the DOE is not a party to this subcontract and is not directly liable to the Subcontractor for claims and disputes within the purview of this clause. Further, the parties agree that, for the purposes of this subcontract, the University is not an agent of the DOE, and that neither the presence of this clause in the subcontract nor provision for arbitration by the Board shall create or imply the existence of privity of contract between the Subcontractor and the DOE.
- (c) *Scope of Clause.* The parties agree that the rights and procedures set forth in this clause are the exclusive rights and procedures for the resolution of all claims and disputes arising under, or relating to, this subcontract. The parties shall be bound by an arbitration decision, which shall be enforceable as provided in the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the terms of this clause.
- (d) Submission of Claims by Subcontractor: Procurement Manager's Decision.

- (1) Unless otherwise provided in this subcontract, the Subcontractor must file any claim against the University within 30 calendar days after the Subcontractor knew or should have known the facts giving rise to the claim.
- (2) The Subcontractor must submit any claim in writing first to the University's procurement specialist, who shall attempt to resolve the matter within a reasonable amount of time. If the University's procurement specialist does not resolve the claim in a manner satisfactory to the Subcontractor, and the Subcontractor desires to pursue further action, the Subcontractor must submit the claim in writing to the Procurement Manager.
- (3) Within sixty days of receipt of the claim, the Procurement Manager must issue a decision or notify the Subcontractor of the time within which a decision will be issued, which shall be reasonable, taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the Subcontractor in support of the claim. If the Procurement Manager fails to issue a decision on a subcontract claim within the specified period, the Subcontractor may make a demand for arbitration with the Board as if the claim had been denied.
- (4) The University's procurement specialist may also submit a claim against the Subcontractor in writing to the Procurement Manager, who shall issue a written decision.
- (5) The decision of the Procurement Manager shall be final and conclusive unless the complaining party demands arbitration by the Board in accordance with the terms of this clause.

(e) Demand for Arbitration

If the decision of the Procurement Manager is not satisfactory to a complaining party, and the complaining party desires to pursue further action, the complaining party must, within 45 days after receipt of the Procurement Manager's decision, submit to the Board a written demand for arbitration of the claim. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board.

- (f) Right to a Hearing: Costs. In any arbitration pursuant to this clause, both parties shall be afforded an opportunity to be heard and to present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.
- (g) Arbitration Decisions Judicial Review. An arbitration decision shall be final and conclusive unless a party, within one hundred and twenty days after the date of receipt of a copy of the decision, files an action to vacate, modify, or correct the decision pursuant to the Federal Arbitration Act.
- (h) Subcontractor Performance Pending Claim Resolution. The Subcontractor shall proceed diligently with performance of this subcontract and shall comply with any decision of the University's procurement specialist or Procurement Manager, pending final resolution of any claim or dispute arising under, or relating to, this subcontract.
- (i) No Other Court Action. No action based upon any claim or dispute arising under, or relating to, this subcontract shall be brought in any court except as provided in this clause.
- (j) Choice of Law. This subcontract shall be governed by Federal law as provided in this subparagraph. Irrespective of the place of award, execution or performance, this subcontract shall be construed and interpreted, and its validity determined, according to the Federal common law of government contracts as enunciated and applied to prime government contracts by the Board and Federal courts having appellate jurisdiction over the decisions of the Board rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act and other

Federal statutes (including the Contract Disputes Act of 1978), Federal rules (including the Federal Acquisition Regulation, the Department of Energy Acquisition Regulation, and the rules promulgated by the Board) shall apply in accordance with their respective provisions.

- (k) Interest. Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

Clause A13 ³/₄ Document Approval Clause

- (a) If the subcontract requires the Subcontractor to furnish shop drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and/or test data, such documents must have University approval prior to performance of the subcontract. The Subcontractor is advised that approval by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this subcontract, except as outlined in paragraph (b) below. Any work done prior to such approval shall be at the Subcontractor's risk.
- (b) If the above documents show variations from subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission. If the University approves any such variation(s), an appropriate and negotiated modification will be issued accordingly.

Clause A14 ³/₄ Equal Opportunity, FAR 52.222-26 (Incorporated by Reference)

Clause A15 ³/₄ Federal, State, and Local Taxes

- (a) **Definitions.** "*Contract date*," as used in this clause, means the effective date of this subcontract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-Imposed Federal Tax," as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-Relieved Federal Tax," as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- (b) The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal

excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.

- (d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the University.
- (f) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Subcontractor shall promptly notify the University's procurement specialist of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate actions as the University's procurement specialist directs.
- (h) The University shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

Clause A16 ³/₄ Hazardous Material Identification and Material Safety Data

- (a) As prescribed in Federal Standard No. 313B, the Subcontractor agrees to submit 5 days before delivery of the goods, a Material Safety Data Sheet (Department of Labor Form OSHA-20) for all hazardous material, whether or not listed in Appendix A of the Standard. This obligation applies to all goods delivered under the subcontract that will involve exposure to hazardous materials or items containing these materials.

Failure to comply with U.S. Department of Transportation (Title 49 of the Code of Federal Regulations) or International Air Transport Association rules and regulations governing hazardous and dangerous goods may result in the University deducting any necessary repackaging costs from the Subcontractor's invoice. If requested by the University's procurement specialist, the Subcontractor shall provide the applicable packaging certification at no additional charge. One copy of each Material Safety Data Sheet must accompany each shipment of hazardous materials.

- (b) **Definition.** "*Hazardous material*," as used in this clause, is defined in Federal Standard No 313B, in effect on the date of the subcontract.
- (c) Neither the requirements of this clause nor any act or failure to act by the University shall relieve the Subcontractor of any responsibility or liability for the safety of University, Subcontractor, lower-tier subcontractor, or other personnel or property.
- (d) The Subcontractor shall comply with applicable federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The University's rights in data furnished under the subcontract with respect to hazardous materials are as follows:

- (1) To use, duplicate, and disclose any data to which this clause applies. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the University for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of the subcontract providing for rights in data.
- (3) That the University is not precluded from using in any manner similar or identical data acquired from other sources.
- (4) That the data shall not be duplicated, disclosed, or released outside the University or the Government, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:

"These data are furnished under University of California, Los Alamos National Laboratory Subcontract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of _____ (the Subcontractor). This legend shall be marked on any reproduction of this data."
- (5) That the Subcontractor shall not place the legend or any other restrictive legend on (i) any data that the Subcontractor or any lower-tier subcontractor previously delivered to the University without limitations or (ii) should be delivered without limitation under the provisions of the Rights in Data - General clause of this document.
- (f) The Subcontractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in lower-tier subcontracts (including purchase designations or subcontracts) under the subcontract involving hazardous materials.

Clause A17 ³/₄ Inspection

The goods or services furnished shall be exactly as specified in the subcontract, free from all defects in Subcontractor's design, workmanship, and materials and, except as otherwise provided in the subcontract, shall be subject to inspection and test by the University at all times and places. The University or the Government has the right to inspect or test at the Subcontractor's or lower-tier subcontractor's facility and has the right to require the Subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. If, before final acceptance, any goods or services are found to be defective or not as specified, the University may reject them, require the subcontractor to correct them without charge, or require delivery of such goods or services at a reduction in price that is equitable under the circumstances. If the Subcontractor is unable or refuses to correct such items within a time deemed reasonable by the University's procurement specialist, the University's procurement specialist may terminate the subcontract in whole or in part. The Subcontractor shall bear all risks for rejected goods and services and, in addition to any costs for which the Subcontractor may become liable to the University under other provisions of the subcontract, shall reimburse the University for all transportation costs, other related costs, incurred, or payments to the Subcontractor according to the terms of the subcontract for unaccepted goods and services. Notwithstanding final acceptance and payment, the Subcontractor shall be liable for latent defects,

fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to and do not limit the University's rights provided in the clause.

Clause A18 $\frac{3}{4}$ Limitations on Disclosure or Dissemination of Information

- (a) The Subcontractor agrees that any information to which the Subcontractor or its personnel obtains access in the course of this subcontract shall be safeguarded from disclosure or dissemination in accordance with the terms of any markings or other guidance accompanying such information. Such information may include, but is not limited to: proprietary information or trade secrets of third parties; unpublished software or technical data generated at the University; business, administrative, or financial information of the University or third parties; and other University information identified as privileged, proprietary, or otherwise subject to limitations with regard to dissemination.
- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b) in any lower-tier subcontract.

Clause A19 $\frac{3}{4}$ Notice of Labor Dispute

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the University's procurement specialist.
- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b), in any lower-tier subcontract to which a labor dispute may delay the timely performance of the subcontract; except that each lower-tier subcontract shall provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower-tier subcontractor shall immediately notify the next higher-tier subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

Clause A20 $\frac{3}{4}$ Officials Not to Benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of the subcontract or to any benefit arising from it. However, this clause does not apply to the subcontract to the extent that the subcontract is made with a corporation for the corporation's general benefit.

Clause A21 $\frac{3}{4}$ Payments

The University shall pay the Subcontractor, upon the submission of proper invoices or vouchers, the prices stipulated in this subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this subcontract. Unless otherwise specified in this subcontract, payment shall be made on partial deliveries accepted by the University if —

- (a) The amount due on the deliveries warrants it; or
- (b) The Subcontractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total subcontract price.

Clause A22 $\frac{3}{4}$ Permits or Licenses

Except as otherwise directed in writing by the University's procurement specialist, the Subcontractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

Clause A23 $\frac{3}{4}$ Pricing of Adjustments

When costs are a factor in any determination of a price adjustment pursuant to the Changes clause or any other provision of the subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR.

Clause A24 $\frac{3}{4}$ Printing

- (a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "*printing*" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

Clause A25 $\frac{3}{4}$ Property, FAR 52.245-2 including Alternates I or II, as applicable

(Incorporated by Reference)

Clause A26 $\frac{3}{4}$ Restrictions on Certain Foreign Purchases (May 1992)

- (a) Unless advance written approval of the University is obtained, the Subcontractor shall not acquire for use in the performance of this subcontract
 - (1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;
 - (2) Any supplies that are or were located in or transported through North Korea, Vietnam, Cambodia, or Cuba; or
 - (3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such clauses.
- (b) The Subcontractor shall not acquire for use in the performance of this subcontract supplies or services originating from sources in Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

- (c) The Subcontractor agrees to insert this clause, including this paragraph (c) in all lower-tier subcontracts hereunder.

Clause A27 $\frac{3}{4}$ Restriction on Disclosure and Use of Data

The University or the Government may be requested to disclose data contained in your offer. To avoid data in your offer from being disclosed to the public and/or otherwise being used by the University or the Government, the Subcontractor shall include the following legend in the title page of the offer and identify the data subject to restriction throughout the offer:

"This offer includes data that shall not be disclosed outside the University or the Government and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this offer. If, however, the subcontract is awarded to this Subcontractor as a result of or in connection with the submission of this data, the University and the Government shall have the right to duplicate, use or disclose the data to the extent provided for in the resulting subcontract. This restriction does not limit the University's or the Government's rights to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheet(s) *{insert the numbers or other identifier}*."

Clause A28 $\frac{3}{4}$ Restrictions on Lower-tier Subcontractor Sales to the Government

- (a) Except as provided in (b) below, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier subcontractors directly to the University of any item or process (including software) made or furnished by the lower-tier subcontractor under this subcontract or under any follow-on production subcontract.
- (b) The prohibition in (a) above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Subcontractor agrees to incorporate this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract.

Clause A29 $\frac{3}{4}$ Security

- (a) **Responsibility.** The Subcontractor has the duty to safeguard all classified information, special nuclear material, and other Government property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and for protecting against sabotage, espionage, loss, and theft of the classified documents and material in the Subcontractor's possession in connection with the performance of work under the subcontract. Except as otherwise expressly provided in the subcontract, the Subcontractor shall, upon completion or termination of the subcontract, transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of the subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the subcontract and such retention is approved by the University, the Subcontractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained,

the conditions governing the retention of the matter, and the period of retention if known. If the retention is approved by the University, the security provisions of the subcontract will continue to apply to the matter retained.

Special nuclear material will not be retained after the completion or termination of the subcontract.

- (b) **Regulations.** The Subcontractor agrees to conform to all security regulations and requirements of DOE.
- (c) **Definition of Classified Information.** The term "*classified information*" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) **Definition of Restricted Data.** The term "*Restricted Data*," means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) **Definition of Formerly Restricted Data.** The term "*Formerly Restricted Data*" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) **Definition of National Security Information.** The term "*National Security Information*" means any information or material regardless of its physical form or characteristics, that is owned by or produced for or by or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior orders to require protection against unauthorized disclosure, and that is so designated.
- (g) **Definition of Special Nuclear Material (SNM).** SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material but does not include source material; or (2) any material artificially enriched by any of the foregoing but does not include source material.
- (h) **Security Clearance of Personnel.** The Subcontractor shall not permit any person to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) **Criminal Liability.** It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under the subcontract may subject the Subcontractor, its agents, employees, or lower-tier subcontractors to criminal liability under the laws of the United States. (See Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)
- (j) **Lower-tier subcontracts.** Except as otherwise authorized in writing by the University, the Subcontractor shall insert provisions similar to the foregoing in all lower-tier subcontracts under the subcontract.

Clause A30 ³/₄ State of New Mexico Gross Receipts and Compensating Tax

- (a) Within 30 days after award of the subcontract, the Subcontractor shall advise the State of New Mexico of this subcontract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico, and shall identify the subcontract number.
- (b) To the extent required by New Mexico law, the Subcontractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and compensating Tax Act of New Mexico, assessed against the Subcontractor price paid for performance of the subcontract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Subcontractor or its lower-tier subcontractors will be determined in accordance with the Costs and Expenses clause at Dear 970.5204-13 of the subcontract except as provided in paragraph (d) of this clause.
- (c) The Subcontractor shall submit applications for Nontaxable Transaction Certificates (NTTC), Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico, 87509. The Subcontractor shall use the NTTC certificates strictly in accordance with the subcontract and the agreement between DOE and the New Mexico Taxation and Revenue Department.
- (d) The Subcontractor shall provide NTTC's to each vendor in New Mexico selling tangible personal property to the Subcontractor for use in the performance of the subcontract.
- (e) The Subcontractor shall pay the New Mexico compensating use tax for any tangible personal property that is purchased pursuant to a NTTC if such property is not used for federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Subcontractor that would be otherwise subject to compensating tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Subcontractor only if such property is not used for federal purposes.
- (g) The University may receive information regarding the Subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the University, may participate in any matter of proceedings pertaining to this clause of the above-mentioned agreements. This shall not preclude the Subcontractor from having its own representative nor does it obligate the University to represent its Subcontractor.
- (h) The Subcontractor agrees to insert the substance of this clause, including this paragraph (h), in each lower-tier subcontract that meets the criteria in FAR 29.401-6 (b) (1) through (3), 48 CFR Part 29.
- (i) Paragraphs (a) through (h) of this clause shall be null and void should the agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred before the date of termination.

Clause A31 ³/₄ Stop-Work Order

- (a) The University may, at any time, by written stop-work order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
- (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the stop-work order as provided in the Default or the Termination for Convenience clauses of the order.
- (b) If a stop-work order issued under this clause is canceled or if the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University's procurement specialist shall make an equitable adjustment in the delivery schedule or subcontract price or both, and the subcontract shall be modified, in writing, accordingly, if
- (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of the subcontract; and
 - (2) The Subcontractor asserts a claim for rights to the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides that facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for the convenience of the University, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

Clause A32 ³/₄ Termination for Convenience

The University, by written notice, may terminate the subcontract in whole or in part when it is in the University's interest. If the subcontract is terminated, the rights, duties, and obligations of the parties, including compensation to the Subcontractor, shall be in accordance with Part 49 of the FAR.

Clause A33 ³/₄ Title

- (a) Title to the goods and services purchased hereunder shall pass directly from the Subcontractor to the Government (through the University) at the f.o.b. point shown, subject to the right of University to reject upon inspection.

- (b) **Identification.** To the extent directed by the procurement specialist, the Subcontractor shall identify University and DOE property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the University, as shall indicate its ownership by the University or DOE.

Clause A34 $\frac{3}{4}$ Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property

- (a) The Subcontractor shall deliver items to the University which conform to the specifications to which they are represented to be manufactured. The Subcontractor shall not furnish any item or component that is used or reconditioned material; manufactured with suspect or counterfeit materials, parts, and/or components; residual inventory resulting from terminated Government contracts or subcontracts; or former Government surplus property unless such item or component was listed in the applicable attachment to the quotation and approved by the University's procurement specialist, or unless otherwise authorized in writing by the University's procurement specialist.
- (b) All items or components furnished under the subcontract shall comply with the terms and specifications contained in the subcontract.

Clause A35 $\frac{3}{4}$ Warranty

The Subcontractor agrees that goods or services furnished under the subcontract shall be covered by the most favorable commercial warranties the Subcontractor gives to any customer for the same or substantially similar goods or services and the Subcontractor shall furnish copies of same to the University. The rights and remedies provided by such warranties are in addition to and do not limit any right afforded to the University by any other clause of the subcontract. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the goods or services by the University.

Clause A36 $\frac{3}{4}$ Whistleblower Protection

- (a) The Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708, with respect to work performed on University or Government premises.
- (b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts, at all tiers, with respect to work performed on University or Government premises.

Clause A37 $\frac{3}{4}$ Work on University or Government Premises

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor or its lower-tier subcontractors at University or Government-owned sites or facilities, the following provisions shall apply:

- (a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University's procurement specialist, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each. The Subcontractor further agrees that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) **Indemnify and Hold Harmless.**

- (1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, cause of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborer's, materialmen's, and mechanic's liens upon the real property upon which the work is located or any other property of the University or the Government; and
- (2) Promptly notify the University's procurement specialist, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action or suits, or liens. The Subcontractor, at the request of the University's procurement specialist, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) **Cleaning up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its lower-tier subcontractors tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and its lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.
- (d) **Employees.** The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall immediately remove such person from the work under the subcontract, and that person shall not again, without written permission of the University's procurement specialist, be assigned to work under the subcontract;

- (e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University's procurement specialist with one copy of the certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.
- (f) **Environment, Safety, Health, and Fire Protection.**
- (1) The Subcontractor shall take all reasonable precautions in the performance of the work under the subcontract to protect the health and safety of employees and of members of the public and shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University's procurement specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails to comply with said regulations or requirements of the University and DOE, the University's procurement specialist may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start work order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

"B" Clauses Also Apply to Subcontracts Exceeding \$2500

Clause B1 $\frac{3}{4}$ Affirmative Action for Handicapped Workers, FAR 52.222-36 (Incorporated by Reference)

Clause B2 $\frac{3}{4}$ Contract Work Hours and Safety Standards Act - Overtime Compensation

- (a) **Overtime requirements.** No Subcontractor or lower-tier subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation [FAR] 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 $\frac{1}{2}$ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) **Withholding for unpaid wages and liquidated damages.** The University shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such contract or any other federal contract with the same Subcontractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same Subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) **Payrolls and basic records.**
- (1) The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department Of Labor regulations at 29 CFR 5.5 (a)(3) implementing the Davis-Bacon Act.
 - (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of the University or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) **Lower-tier subcontracts.** The Subcontractor shall insert in any lower-tier subcontract the provisions set forth in paragraphs (a) through (e) of this clause and also an clause requiring the lower-tier subcontractor to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

Clause B3 $\frac{3}{4}$ Fair Labor Standards Act and Service Contract Act, FAR 52.222-43

(Incorporated by Reference). *Note: This clause applies only to subcontracts for fixed-price services exceeding \$2,500 that are written for multiple years or contain options.*

Clause B4 $\frac{3}{4}$ Fair Labor Standards Act and Service Contract Act - Price Adjustment, FAR 52.222-44 (Incorporated by Reference). *Note: This clause applies only to subcontracts for*

fixed-price services exceeding \$2,500 that are subject to the Service Contract Act, are not for multiple years, and do not have options to renew.

"C" Clauses Also Apply to Subcontracts Over \$10,000

Clause C1 ³/₄ Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, FAR 52.222-37 (Incorporated by Reference)

Clause C2 ³/₄ Examination of Records by Comptroller General

- (a) This clause applies if the subcontract exceeds \$10,000 and was entered into by negotiation.
- (b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office (GAO) shall, until three years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract.
- (c) The Subcontractor agrees to include in lower-tier subcontracts under the subcontract an clause to the effect that the Comptroller General or a duly authorized representative from the GAO shall, until three years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the lower-tier subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) subcontracts not exceeding \$10,000 and (2) subcontracts for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (d) The periods of access and examination in paragraphs (b) and (c) above for records relating to: (1) appeals under the Disputes clause; (2) litigation or settlement of claims arising from the performance of the orders; or (3) costs and expenses of the order to which the Comptroller General or a duly authorized representative from the GAO has taken exception, shall continue until such appeals, litigation, claims, or exceptions are disposed of.
- (e) Nothing in this subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this subcontract.

Clause C3 ³/₄ Affirmative Action for Special Disabled and Vietnam Era Veterans, FAR 52.222-35 (Incorporated by Reference)

Clause C4 ³/₄ Walsh-Healey Public Contracts Act, FAR 52.222-20 (Incorporated by Reference)

"D" Clauses Also Apply to Subcontracts Over \$25,000

Clause D1 — Default

- (a)(1) The University may, subject to paragraph (c) and (d) below, by written notice of default to the Subcontractor, terminate the subcontract in whole or in part if the Subcontractor fails to
 - (l) Deliver the goods or perform the services within the time specified in the subcontract or any extension thereof;

- (ii) Make progress, so as to endanger performance of the subcontract (but see subparagraph [a][2] below); or
 - (iii) Perform any of the other provisions of the subcontract (but see subparagraph [a][2] below).
- (2) The University's right to terminate the subcontract under subparagraphs (1)(ii) and (1)(iii), above, may be exercised if the Subcontractor does not cure such failure within ten days (or more if authorized in writing by the University) after receipt of the notice from the University specifying the failure.
- (b) If the University's procurement specialist terminates the subcontract in whole or in part, it may acquire, under the terms and in the manner the University considers appropriate, goods or services similar to those terminated, and the Subcontractor will be liable to the University for any excess costs for those goods or services. However, the Subcontractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier and if the cause of the default is beyond the control of both the Subcontractor and the lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.
- (e) If the subcontract is terminated for default, the University may require the Subcontractor to transfer title to the Government and deliver to the University, as directed by the University's procurement specialist, any (1) completed goods and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of the subcontract. Upon direction of the University, the Subcontractor shall also protect and preserve property in its possession and in which the University has an interest.
- (f) The University shall pay the subcontract price for completed goods delivered and accepted. The Subcontractor and the University shall agree on the amount of payment for manufacturing goods delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The University may withhold any sum from these amounts that the University determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University.

- (h) The rights and remedies of the University and the Government in this clause are in addition to any other rights and remedies prided by law or under the subcontract.

Clause D2 — Notice and Assistance Regarding Patent and Copyright Infringement

- (a) The Subcontractor shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based on the performance of the subcontract, of which the Subcontractor has knowledge.
- (b) In the event of any claim of suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of the subcontract or out of the use of any goods furnished or work or services performed under the subcontract, the Subcontractor shall furnish to the Government, through the University, when requested by the University's procurement specialist, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except when the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include and require inclusion of this clause in all subcontracts at any tier for goods or services (including construction and architect-engineer subcontract and those subcontracts for goods, models, samples, or design or testing services) expected to exceed \$25,000.

Clause D3 — Patent Indemnity

- (a) The Subcontractor shall indemnify the University and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of goods, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under the subcontract, or out of the use or disposal by or for the account of the Government of such goods or construction work.
- (b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the University or the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the University directing a change in the goods to be delivered or to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor; (2) an infringement resulting from addition to or change in goods furnished or construction work performed that was made after the delivery or performance; or (3) a claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a competent jurisdiction.

Clause D4 — Preference for U.S.-Flag Air Carriers

- (a) **Definitions.** "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places, both of which are outside the United States.

"United States," as used in this clause, means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S. Flag Carriers," as used in this clause, means an air carrier holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C 1371).

- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government Contractors and University Subcontractors and lower-tier subcontractors use U.S.-flag carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Subcontractor agrees, in performing work under the subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.
- (d) If the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a certification on vouchers involving such transportation essentially as follows:

"Certification of Unavailability of U.S.-Flag Air Carriers"

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available, or it was necessary to use foreign-flag air carrier service for the following reasons (see Section 47.403 of the FAR). State reasons: (End of certification).

- (e) The Subcontractor shall include the substance of this clause, including this paragraph (e), in each lower-tier subcontract under the subcontract that may involve international air transportation.

Clause D5 — Reporting of Royalties

- (a) If any royalty payments are reflected in the subcontract price to the University, the Subcontractor agrees to report in writing to the University during performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of the University of any individual payments or royalties shall not stop the University or DOE at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.
- (b) The Subcontractor agrees to include the provisions of this clause, appropriately modified as to parties, in all lower-tier subcontracts exceeding \$25,000 unless otherwise approved by the University.

Clause D6 — Utilization of Labor Surplus Area Concerns, FAR 52.220-3 (Incorporated by Reference)

Clause D7 — Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, FAR 52.219-8 (Incorporated by Reference)

Clause D8 — Utilization of Women-Owned Small Business, FAR 52.219-13 (Incorporated by Reference)

"E" Clauses Also Apply to Subcontracts Over \$100,000

Clause E1 — Clean Air and Water, FAR 52.223-2 (Incorporated by Reference)

Clause E2 — Limitation on Payments to Influence Certain Federal Transactions

(a) **Definitions.** "Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions: (1) The awarding of any Federal contract; (2) The making of any Federal grant; (3) The making of any Federal loan; (4) The entering into of any cooperative agreement; and (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

"Indian Tribe" and "Tribal Organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or Attempting to Influence," as used in this clause, means making, with intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local Government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or Employee of an Agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.

- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable Compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable Payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly Employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or

an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (B)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and Technical Services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of —

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the

preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

- (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that does not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocates one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Subcontractor who requests or receives a University subcontract shall file with the University a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds

(to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

- (2) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes-
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any lower-tier subcontract exceeding \$100,000 under the Federal contract.
- (4) All Subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the University. The University shall submit all disclosures to the DOE at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor. Each Subcontractor certification shall be retained in the subcontract file of the University.

(d) **Agreement.** The Subcontractor agrees not to make any payment prohibited by this clause.

(e) **Penalties.**

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. Section 1352. An imposition of a civil penalty does not prevent the University or the Government from seeking any other remedy that may be applicable.
- (2) Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

(f) **Cost allowability.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

Clause E3 — Termination for Convenience (For Subcontracts Exceeding \$100,000)

- (a) The Termination for Convenience clause of this document, shall not apply to subcontracts subject to this Clause E3.
- (b) The University's procurement specialist may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination

is in the University's or the Government's interest. The University's procurement specialist shall terminate by delivering to the Subcontractor a "Notice of Termination" specifying the extent of termination and the effective date.

- (c) After receipt of a Notice of Termination, and except as directed by the University's procurement specialist, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts for goods, services, or facilities, except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the University, all rights, title, and interests of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With the approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for the purposes of this clause.
 - (6) As directed by the University, transfer title to the Government and deliver to the University (i) fabricated or unfabricated parts, work in process, completed work, and goods or other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the University may direct, for the protection and preservation of the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in subparagraph (c)(6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at the prices approved by, the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University,
- (d) After expiration of the "plant clearance period" (see Subpart 45.6 of the FAR), the Subcontractor may submit to the University's procurement specialist a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within 15 days the University will establish a date by which the University, on behalf of the Government, will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University's procurement specialist. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University's procurement

specialist, upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

- (f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of cost shown in paragraph (g)(3) below, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be amended and the Subcontractor paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Subcontractor and the University fail to agree on the whole amount to be paid because of the termination of work, the University shall pay the Subcontractor the amounts determined by the University as follows, but without duplication of any amounts agreed on under paragraph (f) above:
 - (1) The subcontract price for completed goods or services accepted by the University (or sold or acquired under subparagraph (c)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any cost attributable to goods or services paid or to be paid under subparagraph (g)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subdivision (2)(i) above; and
 - (iii) A sum, as profit on subdivision (2)(i) above, determined by the University under 49.202 of the FAR, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the University shall allow no profit under this subdivision (g)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the University or the Government expressly assumed the risk of loss, the University shall exclude from the amounts payable to the Subcontractor under paragraph (g) above, the fair value, as determined by the University, of

property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to the Government.

- (i) The Cost principles and procedures of Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Subcontractor shall have the right of appeal, under the Disputes clause of this document, from any determination made by the University under paragraph (e), (g), or (l), except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g), or (l), the University shall pay the Subcontractor (1) the amount taken or, (2) the amount finally determined on an appeal.
- (k) In arriving at the amount due the Subcontractor under this clause, there shall be deducted
 - (1) All unliquidated advanced or other payments to the Subcontractor under the terminated portion of the subcontract;
 - (2) Any claim that the University has against the Subcontractor under the subcontract; and
 - (3) The agreed price for or the proceeds of sale of goods or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the University.
- (l) If the termination is partial, the Subcontractor may file a proposal with the University for an equitable adjustment of the price(s) of the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the University's procurement specialist.
- (m)(1) The University may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215 (b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (n) Unless otherwise provided in the subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of the subcontract for three years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under the subcontract. The Subcontractor shall make these records and documents available to the University or to the Government at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the University, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

"F" Clauses Do Not Apply Unless Specifically Referred To in the Request for Solicitation and/or Subcontract

Clause F1 $\frac{3}{4}$ Administration of Cost Accounting Standards

For the purpose of administering the Cost Accounting Standards (CAS) requirements under the subcontract, the Subcontractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the University's procurement specialist or the Government Contracting Officer a description of any accounting change, the potential impact of the change on subcontracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change that displays the potential shift of costs between CAS-covered subcontracts by contract type (e.g., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Subcontractor business activity. As related to CAS-covered subcontracts, the analysis should display the potential impact of funds of the various Agencies/Departments (e.g., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
 - (1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraphs (a)(3) and (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a subcontract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subparagraph (a)(4)(ii) or (a)(4)(iii) of the Cost Accounting Standards clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the Cost Accounting Standards clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practice clause within 60 days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Subcontractor.
- (b) Submit a cost impact proposal in the form and manner specified by the University's procurement specialist or the Government Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) above. If the above proposal is not submitted either in the specified time, or any extension granted by the University's procurement specialist or the Government Contracting Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the University's procurement specialist or the Government Contracting Officer.
- (c) Agree to appropriate subcontract and lower-tier subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the Cost Accounting Standards clause or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause.

- (d) For all lower-tier subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause —
 - (1) So state in the body of the lower-tier subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
 - (2) Include the substance of this clause in all negotiated lower-tier subcontracts. In addition, within 30 days after award of the lower-tier subcontract, submit the following information to the Subcontractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:
 - (i) Lower-tier subcontractor's name and subcontract number;
 - (ii) Dollar amount and date of award;
 - (iii) Name of the Subcontractor making the award; and
 - (iv) Any changes the lower-tier subcontractor has made or proposes to make to accounting practices that affect prime contracts or lower-tier subcontracts containing the CAS clause or the Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the lower-tier subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (e) Notify the University's procurement specialist in writing of any adjustments required to lower-tier subcontracts under the subcontract and agree to an adjustment based on them to the Subcontractor's price or estimated cost and fee. This notice is due within 30 days after proposed lower-tier subcontract adjustments are received and shall include a proposal for adjusting the higher-tier subcontract or the subcontract appropriately.
- (f) For lower-tier subcontracts containing the Cost Accounting Standards clause, require the lower-tier subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the lower-tier subcontractor's signed Certificate of Current Cost of Pricing Data, whichever is earlier.

Clause F2 $\frac{3}{4}$ Classification

In the performance of the work under the subcontract, the Subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier assigns classifications to all documents, material, and equipment originated or generated under the subcontract in accordance with classification regulations and guidance furnished to the Subcontractor by the University's procurement specialist. Every lower-tier subcontract issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such lower-tier subcontract, the lower-tier subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier assigns classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such lower-tier subcontractor by the Subcontractor.

Clause F3 $\frac{3}{4}$ Cost Accounting Standards

- a) Unless the subcontract is exempt under FAR 30.201-1 and 30-201-2, the provisions of FAR Subpart 30.3 are incorporated herein by reference and the Subcontractor, in connection with the subcontract, shall

- (1) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by FAR 30.202-1 through 30.202-5. The practices disclosed for the subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and that contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the University's procurement specialist or the Government Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.
- (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting performance cost data concerning the subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to the subcontract, and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of the subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in FAR Subpart 30.4, in effect on the date of award of the subcontract, or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's assigned Certificate of Current Cost or Pricing Data. The Subcontractor shall also comply with any CAS (or modifications to CAS) that hereafter become applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such subcontract or lower-tier subcontract.
- (4)(i) Agree to an equitable adjustment as provided in the Changes clause of the subcontract if the subcontract cost is affected by a change that, pursuant to subparagraph (a)(3) above, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
- (ii) Negotiate with the University or the Government Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions for this subparagraph (a)(4), provided that no agreement may be made under this provision that will increase costs paid by the University or the Government.
- (iii) When the University or the Government Contracting Officer and the Subcontractor agree to a change to a cost accounting practice, other than a change under subparagraph (4)(i) above, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in an increased cost paid by the University or the Government. Such an adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, from the time the payment by the University or the Government was made to the time the adjustment is effected.

- (b) If the Government Contracting Officer, the University, and the Subcontractor fail to agree whether the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS in FAR Subpart 30.4 or a CAS rule or regulation in FAR Subpart 30.3 and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of the subcontract.
- (c) The Subcontractor shall permit any authorized representatives of the University or the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts that the Subcontractor enters into the substance of this clause, except paragraph (b), and shall require inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or, if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$500,000 in which the price negotiated is not based on
 - (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public or
 - (2) Prices set by law or regulation. The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

Note (1): New or modified CAS shall apply to both national defense and nondefense CAS-covered subcontracts upon award of a new national defense CAS-covered subcontract containing the new or modified Standard. The award of a new nondefense CAS-covered subcontract shall not trigger application of a new CAS or modification to CAS.

Note (2): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure Statement to a Government Contracting Officer, it may satisfy this requirement by certifying to the Subcontractor the date of the Statement and the address of the Government Contracting Officer.

Note (3): In any case in which a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Subcontractor or higher-tier subcontractor, the Subcontractor may authorize direct submission of that lower-tier subcontractor's Disclosure Statement to the University's procurement specialist or the same Government officers to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability as provided in subparagraph (a)(5) of this clause. In view of the foregoing and because the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards as specified in FAR Subpart 30.3 and 30.4 in connection with covered lower-tier subcontracts, it is expected that the Subcontractor may wish to include an clause in each such lower-tier subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such an clause and the terms thereof are matters for negotiation and agreement between the Subcontractor and the lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also

expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the lower-tier subcontractor is a business unit that, pursuant to FAR 30.201-2(b), is entitled to elect modified subcontract coverage and to follow FAR 30.401 and 30.402, the clause at 52.230-5, the "Disclosure and Consistency of Cost Accounting Practices," of the FAR shall be inserted in lieu of this clause.

Note (5): The terms defined in FAR 30.301 and 31.001 shall have the same meanings herein. As there defined, "negotiated subcontract" means any lower-tier subcontract except a firm-fixed price subcontract made by a Subcontractor or lower-tier subcontractor after receiving solicitations from at least two persons not associated with each other or with such Subcontractor or lower-tier subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

Clause F4 ³/₄ Disclosure and Consistency of Cost Accounting Practices

(a) The Subcontractor, in connection with the subcontract, shall

- (1) Comply with the requirements of FAR 30.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 30.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of the subcontract as indicated in FAR Subpart 30.4.
- (2) *(CAS-covered Subcontracts Only)* If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by FAR 30.202-1 through 30.202-5. If the Subcontractor has notified the Government Contracting Officer or the University's procurement specialist that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.

Note (1): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure Statement to the Government Contracting Officer, it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the Government Contracting Officer.

Note (2): In any case where a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Subcontractor or higher-tier subcontractor, the Subcontractor may authorize direct submission of the lower-tier subcontractor's Disclosure Statement to the University's procurement specialist or the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability if it or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and if such failure results in any increased costs paid by the University or the Government. In view of the foregoing and because the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered lower-tier subcontracts, it is expected

that the Subcontractor may wish to include an clause in each such lower-tier subcontracts requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such an clause and the terms thereof are matters for negotiation and agreement between the Subcontractor and lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also expected that any lower-tier subcontract subject to such indemnification will generally require substantially similar indemnification to be submitted by its lower-tier subcontractors.

Note (3): The terms defined in FAR Subpart 30.3 and FAR 31.011 shall have the same meanings in this clause. As there defined, negotiated subcontract means any lower-tier subcontract except a firm-fixed-price subcontract made by a Subcontractor or lower-tier subcontractor after receiving solicitations from at least two persons not associated with each other or such Subcontractor or lower-tier subcontractor, provided that (1) the solicitation to all competitors is identical (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

- (3)(i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by the University, the Government Contracting Officer, or the Subcontractor, and the Subcontractor agrees to negotiate with the University or the Government Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to the subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
- (ii) The Subcontractor shall, when the University or the Government Contracting Officer and the Subcontractor agree to a change to a cost accounting practice and the University or the Government Contracting Officer has made the finding that the change is desirable and not detrimental to the interest of the University or the Government, negotiate an equitable adjustment as provided in the Changes clause of the subcontract. In the absence of the required finding, no agreement may be made under this clause that will increase costs paid by the University or the Government.
- (4) Agree to an adjustment of the subcontract price or cost allowance, appropriate, if the Subcontractor or a lower-tier subcontractor fail to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97, from the time the payment by the University or the Government was made to the time the adjustment is effected.
- (b) If the University, the Government Contracting Officer, and the Subcontractor fail to agree whether the Subcontractor has complied with an applicable CAS rule or regulation as specified in FAR Subparts 30.3 and 30.4 and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute within the meaning of the Disputes clause of the subcontract.
- (c) The Subcontractor shall permit any authorized representative of the Government or the University to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts that the Subcontractor enters into the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that —
 - (1) If the lower-tier subcontract is awarded to a business unit that pursuant to FAR 30.201 is required to follow all CAS, the Cost Accounting Standards clause shall be inserted in lieu of this clause; or
 - (2) This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$500,000 where the price negotiated is not based on —
 - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (ii) Prices set by law or regulation.
 - (3) The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

Clause F5 ³/₄ Extended Warranty

Notwithstanding any other provisions of the subcontract, the Subcontractor warrants that the goods or services furnished shall be of the most suitable grade and exactly as specified in the subcontract. Such warranty shall include the following: performance, workmanship, labor, materials, and the Subcontractor's design or engineering contributions. If a defect is discovered in any goods or services covered in the subcontract, the Subcontractor shall correct at its expense such defects as are reported within one year of final acceptance or such longer period as the Subcontractor may offer in its most favorable applicable warranty. Upon expiration of the applicable warranty period, all such liability shall terminate except for fraud or such gross mistakes as amount to fraud, latent defects, or specific failure to comply with the terms of the subcontract. This warranty is in addition to the Warranty clause in Section A.

Clause F6 ³/₄ Foreign Ownership, Control, or Influence Over Subcontractors

- (a) **Definition.** For purposes of this clause, a foreign interest is defined as any of the following:
 - (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States (U.S.) or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S. or a state or other jurisdiction within the U.S. that is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation in which the degree of ownership, control, or influence over a Subcontractor by a foreign interest is such that a reasonable basis exists for concluding that the compromise of classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.

- (c) For purposes of this clause, lower-tier subcontractor means lower-tier subcontractor at any tier.
- (d) The Subcontractor shall immediately provide DOE through the University's procurement specialist written notice of any changes in the extent and nature of FOCI over the Subcontractor that would affect the answers to the questions in the Foreign Ownership, Control, or Influence Over Contractor Representation. Further, notice of changes in ownership or control that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the University's procurement specialist.
- (e) In those cases where the Subcontractor or lower-tier subcontractor has changes involving FOCI, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (f) If the University at any time determines that the Subcontractor is or is potentially subject to FOCI, the Subcontractor shall comply with such instructions that the University shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (g), in all lower-tier subcontracts under the subcontract that will require access to classified information or a significant quantity of special nuclear material. The Subcontractor shall also require such lower-tier subcontractors to submit a completed Foreign Ownership, Control, or Influence Over Contractor Representation before award of a subcontract. Information to be provided by a lower-tier subcontractor pursuant to this clause will be submitted to the University's procurement specialist.
- (h) Information submitted by the Subcontractor or a lower-tier subcontractor as required pursuant to this clause shall be treated by the University and DOE, to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a Subcontractor obtain and retain any security clearances required by the subcontract. This clause shall not operate as a limitation of the University's or DOE's rights, including the University's right to terminate the subcontract.
- (j) The University may terminate the subcontract for default if
 - (1) The Subcontractor fails to meet obligations imposed by the clause, such as providing the information required by the clause, complying with the University's instructions about safeguarding classified information or making the clause apply to lower-tier subcontractors; or
 - (2) In the University's judgment, the Subcontractor creates a FOCI situation to avoid performance or termination for default. The University may terminate the subcontract for convenience if the Subcontractor becomes subject to FOCI and, for reasons other than avoidance of performance of the subcontract, cannot or chooses not to avoid or mitigate the FOCI problem.

Clause F7 ³/₄ Inspection of Goods ³/₄ Fixed Price

Note: When this clause is invoked for use in a subcontract, it supersedes the Inspection Clause contained in Section A of this document.

- (a) **Definition.** "Goods," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of goods.
- (b) The Subcontractor must provide and maintain an inspection system acceptable to the University that covers goods under this subcontract and must tender to the University for acceptance only goods that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor must prepare records evidencing all inspections made under the system and the outcome. These records must be kept complete and made available to the University during subcontract performance and for as long afterwards as the subcontract requires. The University may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right of review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.
- (c) The University has the right to inspect and test all goods called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The University must perform inspections and tests in a manner that will not unduly delay the work. The University assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this subcontract.
- (d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor must furnish and must require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the University must bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises; provided, that in the case of rejection, the University is not liable for any reduction in the value of inspection or test samples.
- (e)(1) When goods are not ready at the time specified by the Subcontractor for inspection or test, the University may charge to the Subcontractor the additional cost of inspection or test.
- (2) The University may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) The University has the right either to reject or to require correction of nonconforming goods. Goods are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. The University may reject nonconforming goods with or without disposition instructions.
- (g) The Subcontractor must remove goods rejected or required to be corrected. However, the University may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The Subcontractor must not tender for acceptance corrected or

rejected goods without disclosing the former rejection or requirement for correction and, when required, must disclose the corrective action taken.

- (h) If the Subcontractor fails to promptly remove, replace, or correct rejected goods that are required to be removed or to be replaced or corrected, the University may either (1) by subcontract or otherwise remove, replace, or correct the goods and charge the cost to the Subcontractor or (2) terminate the subcontract for default. Unless the Subcontractor corrects or replaces the goods within the delivery schedule, the University may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (l)(1) If this subcontract provides for the performance of University quality assurance at source, and if requested by the University, the Subcontractor must furnish advance notification of the time
 - (i) when Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract and (ii) when the goods will be ready for University inspection.
- (2) The University request shall specify the period and method of the advance notification and the University representative to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if the University representative is in residence in the Subcontractor's plant, nor more than seven (7) workdays in other instances.
- (j) The University must accept or reject goods as promptly as practicable after delivery, unless otherwise provided in the subcontract. Failure of the University to inspect and accept or reject the goods shall not relieve the Subcontractor from responsibility, nor impose liability on the University, for nonconforming goods.
- (k) Inspections and tests by the University do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance must be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the University, in addition to any other rights and remedies provided by law, or under other provisions of this subcontract shall have the right to require the Subcontractor (1) at no increase in subcontract price, to correct or replace the defective or nonconforming goods at the original point of delivery or at the Subcontractor's plant at the University's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the University; provided, that the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule or (2) within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the University elects not to require correction or replacement. When goods are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the University may authorize in writing) after receipt of notice from the University specifying such failure, the University has the right by subcontract or otherwise to replace or correct such goods and charge to the Subcontractor the cost occasioned the University thereby.

Clause F8 ³/₄ Inspection of Services - Fixed Price

Note: When this clause is invoked for use in a subcontract, it supersedes the Inspection Clause contained in Section A. of this document.

- (a) **Definition.** "Services," as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspections or tests on the premises of the Subcontractor or one of its lower-tier subcontractors, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with subcontract requirements, the University may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, the University may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce the subcontract price to reflect the reduced value of the services performed.
- (f) If the University fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, the University may (1) by contract or otherwise, perform the services and charge to the Subcontractor any cost incurred by the University that is directly related to the performance of such service or (2) terminate the subcontract for default.

Clause F9 ³/₄ Labor Surplus Area Subcontracting Program

- (a) **Definitions.** "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the subcontract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the subcontract price.

- (b) The Subcontractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for lower-tier subcontracts within their capabilities when the lower-tier subcontracts are consistent with the efficient performance of the subcontract at prices no higher than obtainable elsewhere. The Subcontractor shall

- (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Subcontractor's LSA subcontracting program;
 - (2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
 - (3) Ensure the LSA concerns have an equitable opportunity to compete for lower-tier subcontracts, particularly by arranging solicitations, time for the preparation of solicitations, quantities, specification, and delivery schedules to facilitate the participation of LSA concerns.
 - (4) Include the Utilization of the Labor Surplus Area Concern clause in lower-tier subcontracts that offer substantial LSA subcontracting opportunities; and
 - (5) Maintain records showing (i) the procedures adopted and (ii) the Subcontractor's performance to comply with this clause. The records will be kept available for review by the University or the Government until the expiration of one (1) year after the award of the subcontract, or for such longer period as may be required by any other clause of the subcontract or by applicable law or regulation.
- (c) The Subcontractor further agrees to insert in any related lower-tier subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the University's procurement specialist of the names of lower-tier subcontractors.

Clause F10 ³/₄ Notice of Small Disadvantaged Business Set-Aside

- (a) **Definitions.** *"Small business concern,"* as used in this clause, means a small business concern
- (1) That is at least 51 percent owned by one or more socially and economically disadvantaged persons, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged persons; and
 - (2) Whose management and daily operations are controlled by one or more such persons.

The Subcontractor shall presume that socially and economically disadvantaged persons include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Americans and other minorities, or any other person found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. The Subcontractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

"Small disadvantaged business concern," as used in this clause, means a small business concern.

- (b) **General.**

- (1) Proposals are solicited from small disadvantaged business concerns. Proposals received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

Clause F11 ³/₄ Notice of Total Small Business Set-Aside

- (a) **Definition.** "*Small business concern*," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is proposing and/or bidding on Government contracts or subcontracts, and qualified as a small business under the size standards established by the U.S. Small Business Administration.
- (b) **General.**
 - (1) Proposals are solicited only from small business concerns. Proposals received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.
 - (2) Any award resulting from this solicitation will be made to a small business concern.
- (c) **Agreement.** A manufacturer or regular dealer submitting a proposal in its own name agrees to furnish, in performing the subcontract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

Clause F12 ³/₄ Nuclear Hazards Indemnity Agreement, DEAR 952.250-70 (Incorporated by Reference)

Clause F13 ³/₄ Organizational Conflicts of Interest

- (a) **Purpose.** The primary purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that relate to the work under the subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of the subcontract.
- (b) **Scope.** Subject to paragraph (h) of this clause, the restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (herein collectively referred to as "Subcontractor") in the activities covered by this clause as a Subcontractor, lower-tier subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.
 - (1) **Technical Consulting and Management Support Services.**
 - (i) The Subcontractor shall be ineligible to participate in any capacity in DOE contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract.

Furthermore, unless so directed in writing by the University, the Subcontractor shall not perform any technical consulting or management support services work under this subcontract on any of its products or services or the goods or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts or subcontracts for technical consulting and management support services.

- (ii) If the Subcontractor, in the performance of the subcontract, prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the University's procurement specialist, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph (b)(1) shall preclude the Subcontractor from offering or selling its standard commercial items to the University or the Government.

(2) Access To and Use of Information.

- (i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as University or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or data that have not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the University it shall not (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the University or DOE based on such information for a period of six months after the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the University or the Government which is based on such information until after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the University or the DOE.
- (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (P.L. 93-579), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Subcontractor shall have, subject to patent, data, and security provisions of this subcontract, the right to use technical data it first produces under this subcontract for its private purpose consistent with the Rights in Data provisions of this subcontract.

(c) Disclosure After Award.

- (1) The Subcontractor agrees that if after award it discovers an organizational conflict of interest with respect to this subcontract, an immediate and full disclosure shall be made

in writing to the University which shall include a description of the action which the Subcontractor has taken or proposes to take to avoid or mitigate such conflicts. The University may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of the University or the Government.

- (2) In the event that the Subcontractor was aware of an organizational conflict of interest prior to the award of this subcontract and did not disclose the conflict to the University, the University may terminate the subcontract for default.

(d) **Lower-Tier Subcontracts.**

- (1) The Subcontractor shall include this clause, including this paragraph (d), in subcontracts of any tier which involve performance or work of the type specified in paragraph (b)(1) above or access to information of the type covered in paragraph (b)(2) above. The terms "subcontract," "Subcontractor," and "University" shall be appropriately modified to preserve the University's and the Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting, or management support services work as defined in DEAR 909.570, the Subcontractor shall obtain for the University a disclosure statement or representation in accordance with DOE regulations in effect at the time, from each intended lower-tier subcontractor or consultant. The Subcontractor shall not enter into any lower-tier subcontract nor engage any consultant unless the University shall have first notified the Subcontractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest, the award is in the best interests of the University and the Government.

- (e) **Remedies.** For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning the subcontract, the University may terminate the subcontract for default, may disqualify the Subcontractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this subcontract.
- (f) **Waiver.** Requests for waiver under this clause shall be directed in writing to the University and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the University and the Government, the University shall grant such a waiver in writing.
- (g) **Modifications.** Prior to a subcontract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, the University will request and the Subcontractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

Clause F14 ³/₄ Price Reduction for Defective Cost or Pricing Data

- (a) If any price, including profit or fee negotiated in connection with the subcontract or any cost reimbursable under the subcontract, was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in

the Subcontractor's Certificate of Current Cost or Pricing Data; (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the subcontract shall be modified to reflect the reduction.

- (b) Any reduction in the subcontract price under paragraph (a) above caused by defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (c)(1) If the University's procurement specialist determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor or lower-tier subcontractor was a sole-source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the University.
 - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
 - (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data
- (2)(i) Except as prohibited by paragraph (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the University based upon the facts shall be allowed against the amount of the subcontract reduction if
 - (A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the subcontract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if —
 - (A) The understated data were known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The University or the Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (d) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made before the date of the modification reflecting the price reduction, the

Subcontractor shall be liable to and shall pay the Government, through the University, at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed for the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

Clause F15 ³/₄ Price Reduction For Defective Cost or Pricing Data - Modifications

- (a) This clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification for which the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause or any cost reimbursable under the subcontract was increased by a significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.
- (c) Any reduction in the subcontract price under paragraph (b) above because of defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (d)(1) If the University determines under paragraph (b) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
 - (i) The Subcontractor or lower-tier subcontractor was a sole-source supplier or otherwise was a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the University.

- (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
 - (iv) The Subcontractor or the lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data
- (2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the University based upon the facts shall be allowed against the amount of the subcontract reduction if
 - (A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the subcontract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if —
 - (A) The understated data were known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The University or the Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (e) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made before the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the Government, through the University, at the time such overpayment is repaid simple interest on the amount of such overpayment to be computed for the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

Clause F16 ³/₄ Priorities and Allocations

- (a) The Subcontractor shall follow the provisions of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR 350) in obtaining controlled materials and other products and materials needed for performance of the subcontract.
- (b) A program or project under this subcontract may be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Public Law 94-163, 42 U.S.C. 6201 et seq.) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Department of Energy and Commerce.

Clause F17 ³/₄ Rights in Data - General

- (a) **Definitions.** *"Computer Software,"* as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Limited Rights Data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Technical Data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Restricted Computer Software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Unlimited Rights," as used in this clause, means the right of the Government and/or the University to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited Rights," as used in this clause, means the rights of the Government and/or the University in limited rights data as set forth in paragraph (f) hereof.

"Restricted Rights," as used in this clause, means the rights of the Government and/or the University in restricted computer software, including minor modifications of such computer software. as set forth in paragraph (f) hereof.

(b) **Allocation of Rights.**

(1) The Government shall have

- (i) Ownership of all technical data and computer software first produced in the performance of this subcontract;
- (ii) The right to inspect technical data and computer software first produced or used in the performance of this subcontract at all reasonable times (for which inspection of the proper facilities shall be afforded DOE by the Subcontractor and its lower-tier subcontractors);
- (iii) The right to have all technical data and computer software first produced or specifically used in the performance of this subcontract delivered to the University or otherwise disposed of by the Subcontractor, either as the University may from time to time direct during the progress of the work or in any event as the University shall direct upon completion or termination of this subcontract, provided that nothing contained in this paragraph shall require the Subcontractor to deliver any technical data or computer software the delivery of which is excused by this Rights in Data - General clause;
- (iv) Unlimited Rights in technical data and computer software specifically used in the performance of this subcontract, except as provided herein regarding copyright, and except for technical data and computer software pertaining to items of standard commercial design provided, that if

such data are Limited Rights Data or Restricted Computer Software the rights of the Government and/or the University in such data shall be governed solely by the provisions of paragraph (f) hereof ("Rights in Limited Rights Data") and ("Rights in Restricted Computer Software"); and

- (v) The right to remove, cancel, correct or ignore any markings not authorized by the terms of this subcontract on any data furnished hereunder if, in response to a written inquiry by the University concerning the propriety of the markings, the Subcontractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case the University will notify the Subcontractor of the action taken.

(2) The Subcontractor shall have

- (i) The right to withhold its Limited Rights Data and Restricted Computer Software in accordance with the provisions of this clause;
- (ii) The right to use for its internal purposes, subject to patent, security or other provisions of this subcontract, data it first produces in the performance of this subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this subcontract have been met as of the date of the internal use of such data; and
- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause.

The Subcontractor agrees that for Limited Rights Data or Restricted Computer Software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by DOE, the University, or a third party, including a DOE Contractor or Subcontractor, and for technical data or computer software it first produces under this subcontract which is authorized to be marked by DOE, the Subcontractor shall treat such data in accordance with any restrictive legend contained thereon.

Nothing contained in this clause shall imply a license to the Government or the University under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government or the University under any patent.

(c) **Copyright (General).**

- (1) The Subcontractor agrees not to mark, register or otherwise assert a copyright in any data in a published or unpublished work, other than as set forth in paragraph (d) below.
- (2) Except for material to which the Subcontractor has obtained the right to assert copyright in accordance with paragraph (d) hereof, the Subcontractor agrees not to include in the data delivered under this subcontract any material copyrighted by the Subcontractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government and the University of the same scope as set forth in paragraph (d) below. If the Subcontractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than incorporated therein by reference, the Subcontractor shall obtain the written authorization of the University to include such material in the data prior to its delivery.

- (d) **Copyrighted Works (Scientific and Technical Articles).** The Subcontractor shall have the right to assert, without prior approval of the University, copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this subcontract, and published in academic, technical or professional journals, symposia proceedings or similar works. When assertion of copyright is made, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship including contract number on the data when such data are delivered to the University as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Subcontractor grants to the Government, and others acting on its behalf, including the University, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
- (e) **Copyrighted Works (Other than Scientific and Technical Articles).**
- (1) The Subcontractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Subcontractor in performance of this subcontract, where the Subcontractor can show that commercialization would be enhanced by such copyright protection, subject to the following:
- (i) Subcontractor Request to Assert Copyright.
- (A) For data other than scientific and technical articles, the Subcontractor shall submit in writing to the University for approval by the DOE Patent Counsel its request to assert copyright in data first produced in the performance of this subcontract pursuant to this clause. Each request by the Subcontractor to be complete must include: (1) the identity of the data (including any computer program) for which the Subcontractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes; (2) whether the data is subject to export control; (3) a statement that the Subcontractor plans to commercialize the data within five (5) years of obtaining permission to assert copyright; and (4) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization.
- (B) Permission of the Subcontractor to assert copyright in excepted categories of data as determined by DOE is expressly withheld. Such excepted categories include data whose release (1) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear related national security purposes; (2) would not enhance the appropriate transfer or dissemination and commercialization of such data; (3) would have a negative impact on U.S. industrial competitiveness; (4) would prevent DOE from meeting its obligations under treaties and international agreements; or (5) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by DOE. Where data are determined to be under an export control restriction, the Subcontractor may still obtain permission to assert copyright in such restricted data for purposes of limited commercialization within the constraints provided by the export control statutes and regulations subject to the provisions of this clause. However, notwithstanding any other provision of this subcontract, all

data developed with Naval Reactor's funding and those data that are classified fall within the above excepted categories and permission to assert copyright will not be granted by DOE for those data. Additionally, the rights of the Subcontractor in data subject to the disposition of data rights in the treaties and international agreements identified under this subcontract as well as those additional treaties and international agreements which DOE may from time to time identify; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this subcontract. Also, the Subcontractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Subcontractor under the subcontract without first obtaining the advanced written permission of the University.

- (ii) DOE Review and Response to Subcontractor's Request. The DOE Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Subcontractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Subcontractor to assert copyright or advise the Subcontractor that DOE needs additional time to respond and the reasons therefor.
- (iii) Permission for Subcontractor to Assert Copyright.
 - (A) For computer software, the Subcontractor shall furnish to the Contractor designated by DOE to serve as the DOE centralized software distribution and control point, at the time permission to assert copyright is given under (ii) above: (1) an abstract describing the software suitable for publication, (2) the source code for each software program, and (3) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The DOE Patent Counsel, for good cause shown by the Subcontractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Subcontractor acknowledges that the above-identified DOE-designated Contractor may provide a technical description of the software in an announcement identifying its availability from the copyright holder.
 - (B) Unless otherwise directed by the University, for data other than computer software to which the Subcontractor has received permission to assert copyright under paragraph (ii) above, the Subcontractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Subcontractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.
 - (C) For a period of five (5) years beginning on the date the Subcontractor is given permission to assert copyright in data, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

- (D) After the five (5) year period set forth in (C) above, or if, prior to the end of such period, the Subcontractor abandons commercialization activities pertaining to the data to which the Subcontractor has been given permission to assert copyright, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.
- (E) Whenever the Subcontractor obtains permission to assert copyright in data, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (C) and (D) above. Such action shall be taken when the data are delivered to the Government, published, licensed, or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

NOTICE: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained) the Government is granted for itself, and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

- (F) With respect to any data to which the Subcontractor has received permission to assert copyright, the DOE has the right, during the 5-year period set forth in subparagraph (e)(1)(i)(A) above, to request the Subcontractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Subcontractor refuses such request, to grant such license itself, if the DOE determines that the Subcontractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i)(A) above. Before licensing under this paragraph (F), DOE shall furnish to the Subcontractor a written request for the Subcontractor to grant the stated license, and the Subcontractor shall be allowed thirty (30) days (or such longer period as may be authorized by the DOE for good cause shown in writing by the Subcontractor) after such notice to show good cause why the license should not be granted. The Subcontractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 - "Appeals."

- (G) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Subcontractor and/or a licensee and which exceeds University/DOE program needs, except as expressly provided in writing by the University. The Subcontractor may use its net royalty income to effect such maintenance costs.
 - (H) At any time the Subcontractor abandons commercialization activities for data for which the Subcontractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and DOE Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.
- (3) It is the responsibility of the Subcontractor to obtain from employees of lower-tier subcontractors data and rights therein necessary to fulfill the Subcontractor's obligations to the Government and the University with respect to such data including at least
- (i) A written acknowledgment by each employee that the Production of Data required by the subcontract is within the scope of the employee's employment; and
 - (ii) An assignment to the Subcontractor of the employee's rights in copyrights subsisting in data, expressly including Computer Software first produced by the employee while employed by Subcontractor under the subcontract; and
 - (iii) An agreement from the employee to execute all necessary and proper papers to assign to the Subcontractor such rights subsisting in data, expressly including Computer Software, upon request by the Subcontractor.

(f) **Subcontracting.**

- (1) The Subcontractor agrees to use a Rights in Data clause as directed by the University in lower-tier subcontracts having as a purpose the conduct of research, development, and demonstration work and in lower-tier subcontracts for supplies.
 - (2) It is the responsibility of the Subcontractor to obtain from its lower-tier subcontractors data and rights therein, on behalf of the Government and/or the University, necessary to fulfill the Subcontractor's obligations to the Government and/or the University with respect to such data. In the event of refusal by a lower-tier subcontractor to Subcontractor to accept a clause affording the Government such rights, the Subcontractor shall:
 - (i) Promptly submit written notice to the University's procurement specialist setting forth reasons for the lower-tier subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and
 - (ii) Not proceed with the subcontract without written authorization of the University's procurement specialist.
- (g) **Rights in Limited Rights Data.** Except as may be otherwise specified in this subcontract as data which are not subject to this paragraph, the Subcontractor agrees to and does hereby grant to the Government and the University an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any Limited Rights Data of the Subcontractor specifically used in the performance of the subcontract; provided, however, that to the extent that any Limited Rights Data when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to the University, such data shall not be used within or outside the Government or University except as provided in the "Limited Rights Notice" set

forth below. All such Limited Rights Data shall be marked with the following "Limited Rights Notice":

LIMITED RIGHTS NOTICE

These data contain "limited rights data", furnished under Subcontract no. _____ with the University which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government and/or University or be used for purposes of manufacture without prior permission of the Subcontractor, except that further disclosure or use may be made solely for the following purposes

- (a) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (b) This "limited rights data" may be disclosed to other lower-tier subcontractors participating in the Government's or University's program of which this subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (c) This "limited rights data" may be used by the Government, the University, or others on their behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

This Notice shall be marked on any reproduction of this data in whole or in part.

(END OF NOTICE)

(h) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this purchase order as data which are not subject to this paragraph, the Subcontractor agrees to and does hereby grant to the Government and the University an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any restricted computer software of the Subcontractor specifically used in the performance of this subcontract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to the University or a representative of the University, such data shall not be used with or outside the Government or University except as provided in the "Restricted Rights" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice"

RESTRICTED RIGHTS NOTICE (long form)

- (a) This computer software is submitted with restricted rights under Subcontract no. _____ with the University. It may not be

used, reproduced, or disclosed by the Government or the University except as provided in paragraph (b) of this notice.

- (b) This computer software may be
 - (1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it is was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by lower-tier subcontractors under a service subcontract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government and University makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government and University, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(END OF NOTICE)

- (2) Where it is impractical to include the Restricted Right Notice on Restricted Computer Software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (short form)

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Subcontract no. _____ with
_____ (name of Subcontractor).

(END OF NOTICE)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean Restricted Computer Software, subject to the rights of the Government and University as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this subcontract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If Restricted Rights Computer Software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software

licensed to the Government and University without disclosure prohibitions, with unlimited rights, unless the Subcontractor includes the following statement with such copyright notice: "unpublished - rights reserved under the Copyright Laws of the United States."

Clause F18 ³/₄ Security Access Authorization and Operations Security

- (a) **Access Authorization.** Subcontractor personnel engaged in the performance of work under a subcontract on University property, government premises, or offsite facilities are required to possess a DOE access authorization ("L" or "Q" clearance), and must comply with the following requirements. The Subcontractor shall be responsible for
- (1) Completing and submitting all necessary application forms for authorized access in advance of the need. Application forms may be obtained from the University's Operational Security and Safeguards (FSS) Division. All personnel granted an access authorization will be briefed by the University, on access to classified matter, security areas, and security requirements;
 - (2) Safeguarding information that may come into the Subcontractor's possession or within the purview of its work. Unless otherwise authorized by the University's procurement specialist in writing, within 30 days of completion or termination of the subcontract, the Subcontractor shall (a) return to the University all classified matter and badges in the possession of the Subcontractor or person under the Subcontractor's control, and (b) furnish to the University a Certificate of Nonpossession (for Offsite Facilities) as well as the Security Termination Statements (Form 5631.29) for all affected personnel; and
 - (3) Ensuring all cleared employees comply with DOE's security requirements including the provisions of DOE Order 5631.1B, "Security Education and Awareness Program."
- (b) **Operations Security Program.** The Subcontractor agrees to implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the provisions of the Laboratory's OPSEC Guidance for LANL Contractors Manual when awarded subcontracts involving access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests.
- (c) Whenever the work under this order requires the issuance of "Q-cleared," "L-cleared," or "Escort Required" badges, the University may withhold final payment to the Subcontractor until all such badges are returned to the University's procurement specialist as required in paragraph (a)(2) above.

Clause F19 ³/₄ Sensitive Foreign Nations Control

- (a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements relating to those countries, which from time to time, are identified to the University by written notice from DOE as sensitive nations. The University shall have the right to terminate according to the termination for convenience clause of these terms and conditions, this subcontract if the University determines that it is unable, without substantially interfering with its policies or without adversely affecting its performance to continue performance of this work under this subcontract as a result of such notification.
- (b) The Subcontractor agrees to incorporate this clause, including this paragraph (b) in all lower-tier subcontracts under this subcontract.

Clause F20 ³/₄ Service Contract Act of 1965 (For Subcontracts \$2500 or Less)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR Part 4.6 if the subcontract exceeded \$2500, the Subcontractor and any lower-tier subcontractor shall pay all employees working on the subcontract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in the subcontract.

Clause F21 ³/₄ Service Contract Act of 1965 (For Subcontracts Exceeding \$2500)

- (a) **Definitions.** "*Act*," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351-358).

"Subcontractor," as used in this clause or in any lower-tier subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a University subcontract not exempted under 41 U.S.C. 356, the principal purpose of which is to furnish services in the United States, (United States is defined in Section 22.1001 of the FAR). The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between the Subcontractor or a lower-tier subcontractor and such persons.

- (b) **Applicability.** To the extent that the Act applies, the subcontract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated into the subcontract by reference. This clause does not apply to subcontracts or lower-tier subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356 as interpreted in Subpart C of 29 CFR 4.

- (c) **Compensation.**

- (1) The Subcontractor shall pay not less than the minimum wage and shall furnish fringe benefits to each service employee under the subcontract in accordance with the wages and benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any attachment to the subcontract.
- (2)(i) If a wage determination is attached, the Subcontractor shall classify any class of service employees not listed in it but to be employed under the subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
- (ii) This conforming procedure shall be initiated by the Subcontractor before the performance of the subcontract by the unlisted class of employee. The Subcontractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the University no later than 30 days after the

unlisted class of employee performs any subcontract work. The University shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employee's authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the University within 30 days of receipt that additional time is necessary.

- (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the University through DOE. The University shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as part of the wage determination.
- (iv) (A) The process of establishing wage and fringe benefit rates that bear reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices that rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
- (B) In the case of a subcontract modification, an exercise of an option, extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract that are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph before the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise the University of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.
- (C) No employee engaged in performing work on the subcontract shall in any event be paid less than the currently applicable minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of the clause shall be paid to all employees performing in the classification from the first day on which subcontract work is performed by them in the classification.

Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced subcontract work shall be a violation of the Act and the subcontract.

- (vi) Upon discovery of failure to comply with paragraph (c)(2) of the clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits that shall be retroactive to the date such class or classes of employees commenced subcontract work.
- (3) **Adjustment of Compensation.** If the term of the subcontract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this subcontract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) **Obligation to Furnish Fringe Benefits.** The Subcontractor or lower-tier subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) **Minimum Wage.** In the absence of a minimum wage attachment for the subcontract, neither the Subcontractor nor any lower-tier subcontractor under this subcontract shall pay any person under this subcontract regardless of whether the person is a service employee less than the minimum wage specified by Section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Subcontractor or any lower-tier subcontractor of any other obligation under law or order for payment of a higher wage to any employee.
- (f) **Successor Subcontracts.** If the subcontract succeeds a subcontract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment for the subcontract, setting forth such collective bargain wage rates and fringe benefits neither the Subcontractor nor any lower-tier subcontractor under the subcontract shall pay any service employee performing the subcontract (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increasing wages and fringe benefits provided for under that agreement. No Subcontractor or lower-tier subcontractor may be relieved of this obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those that prevail for services of a character similar in the locality, or determined, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those that prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the

predecessor subcontract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or lower-tier subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs before or after the award of a subcontract or lower-tier subcontract (53 Comp. Gen. 401 [1973]). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) **Notification to Employees.** The Subcontractor and any lower-tier subcontractor under the subcontract shall notify each service employee commencing work on the subcontract of the minimum wage and any fringe benefits required to be paid pursuant to the subcontract, or shall post a notice of the wage determination attached to the subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2 (a)(4) of the Act and of this subcontract.
- (h) The Subcontractor or lower-tier subcontractor shall not permit any part of the services called for by the subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i)(1) **Records.** The Subcontractor and each lower-tier subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and shall make available for inspection and transcription by the University, or authorized Employment Standards Administration representative, or authorized representative of the wage and Hour Division, a record of the following:
 - (i) For each employee subject to the Act
 - (A) Name, address, and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deduction, rebates, or refunds from total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to the subcontract, wage rates or fringe benefits determined by the interested parties or by Administrator or authorized representative under the terms of paragraph (c) of this clause, a copy of the report required by Paragraph (c)(2)(ii) of this clause will fulfill this requirement.
 - (iii) Any list of the predecessor subcontractor's employees that had been furnished to the Subcontractor as prescribed by paragraph (n) of this clause.
- (2) The Subcontractor shall also make available a copy of the subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.

- (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and the subcontract, and in the case of failure to procure these records, the University, through DOE, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
- (4) The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the work site during normal working hours.
- (j) **Pay Periods.** The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period in which the wages were earned or accrued. A pay period under this Act may not be any duration longer than semi-monthly.
- (k) **Withholding of Payments and Termination of Subcontract.** The University shall withhold from the Subcontractor under any subcontract with the Subcontractor any sums the University or an appropriate official of the Labor Department requests or such sums as the University decides may be necessary to pay underpaid employees employed by the Subcontractor or lower-tier subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the University may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Also, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the subcontract. In such event, the Government may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.
- (l) **Lower-tier subcontracts.** The Subcontractor agrees to insert this clause in all lower-tier subcontracts issued under the subcontract.
- (m) **Collective Bargaining Agreements Applicable to Service Employees.** If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any lower-tier subcontractor under the subcontract are provided for in a collective bargaining agreement that is or will be effective during any period in which the subcontract is being performed, the Subcontractor shall report such fact to the University (who shall, in turn, report it to DOE), together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the subcontract. In the case of such agreements, a copy of the collective bargaining agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance shall be reported promptly after negotiation thereof.
- (n) **Seniority List.** Not less than 10 days before completion of any subcontract being performed at a federal facility where service employees may be retained in the performance of the succeeding subcontract and subject to a wage determination that contains vacation or other benefit provisions based upon length of service with a Subcontractor (predecessor) or successor (29 CFR 4.173), the University shall furnish to DOE a certified list of the names of all service employees on the Subcontractor's or subcontractor's payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the subcontract either with the current or predecessor Subcontractors of each such service employee. DOE shall turn over such list to the University's successor at the commencement of the succeeding contract.

- (o) **Rulings and Interpretations.** Rulings and interpretations of the Act are contained in 29 CFR Part 4.
- (p) **Subcontractor's Certification.**
- (1) By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded a University subcontract or Government contract by virtue of the sanctions imposed under Section 5 of the Act.
 - (2) No part of this subcontract shall be subcontracted to any person or firm ineligible for award of a University subcontract or Government contract under Section 5 of the Act.
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) **Variations, Tolerances, Exemptions Involving Employment.** Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to Section 4(b) of the Act before its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government or University business:
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by Section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under Section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under Section 14 of the Fair Labor Standards Act of 1938, and the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Part 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.
- (r) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Department of Labor, or if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to

journeymen employed on the subcontract in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to its entire work force under the registered program.

- (s) **Tips.** An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by Section 2(a)(1) or Section 2(b)(1) of the Act, in accordance with Section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee received at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of Section 4(c) of the Act.
- (t) **Disputes Concerning Labor Standards.** The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of the subcontract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its lower-tier subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Clause F22 $\frac{3}{4}$ Small Business and Small Disadvantaged Business Subcontracting Plan

- (a) This clause does not apply to small business concerns.
- (b) **Definitions.** "*Commercial product*," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product that, in the opinion of the University, differs only insignificantly from the Subcontractor's commercial product.
- "Subcontract,"* as used in this clause means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for goods or services required to perform the contract or subcontract.
- (c) Upon request by the University's procurement specialist, the Subcontractor shall submit and negotiate a subcontracting plan, where applicable, that addresses separately subcontracting with small business concerns and small disadvantaged business concerns. If the Subcontractor is submitting an individual subcontract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic subcontract and separate parts of each option (if any). The plan shall be included in and made a part of the resultant subcontract. The subcontracting plan

shall be negotiated within the time specified by the University's procurement specialist. Failure to submit and negotiate the subcontracting plan shall make the Subcontractor ineligible for award of a subcontract.

- (d) The Subcontractor's subcontracting plan shall include the following:
- (1) Expressed in terms of percentages of total planned subcontracting dollars, goals for the use of small business concerns and small disadvantage business concerns as lower-tier subcontractors. The Subcontractor shall include all lower-tier subcontracts that contribute to subcontract performance and may include a proportionate share of goods and services that are normally allocated as indirect costs.
 - (2) A statement of
 - (i) Total dollars planned to be subcontracted.
 - (ii) Total dollars planned to be subcontracted to small business concerns; and
 - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.
 - (3) A description of the principal types of goods and services to be subcontracted and an identification of the types planned for subcontracting to small business concerns and to small disadvantaged business concerns.
 - (4) A description of the method used to develop the subcontracting goals in (1) above.
 - (5) A description of the method used to identify potential sources of solicitations (e.g., existing company source list, the Procurement Automated Source System [PASS] of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).
 - (6) A statement about whether the Subcontractor included indirect costs in establishing subcontracting goals and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns and with small disadvantaged business concerns.
 - (7) The name of the person employed by the Subcontractor who will administer the Subcontractor's subcontracting plan and a description of the duties of that person.
 - (8) A description of the efforts the Subcontractor will make to ensure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for lower-tier subcontracts.
 - (9) Assurances that the Subcontractor will include the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns clause in all lower-tier subcontracts (except small business concerns) who receive lower-tier subcontracts exceeding \$500,000 (\$1,000,00 for construction of any public facility) to adopt a plan similar to the plan agreed to by the Subcontractor.
 - (10) Assurances that the Subcontractor will

- (i) Cooperate in any studies of surveys that may be required by the University.
 - (ii) Submit periodic reports to allow the University or the Government to determine the extent of compliance by the Subcontractor with the subcontracting plan;
 - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, (SF 295 is not required) in accordance with instructions on the form, except that (1) the form shall be submitted quarterly on or before the 15th of January, April, July, and October and upon subcontract completion and (2) the report shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of the subcontract; and
 - (iv) Ensure that its lower-tier subcontractors agree to submit Standard Form 294 in accordance with the instructions in paragraph (10)(iii) above.
- (11) A recitation of the types of records, including establishing source lists, the Subcontractor will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan and a description of its efforts to locate small and disadvantaged business concerns and award lower-tier subcontracts to them. The records shall include at least the following (on a facility-wide or company-wide basis unless otherwise indicated):
 - (i) Source lists, guides, and other data that identify small and small disadvantaged business concerns;
 - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns;
 - (iii) Records on each lower-tier subcontract solicitation resulting in an award of more than \$100,000, and indicating (A) whether small business concerns were solicited and if not, why not; (B) whether small disadvantaged business concerns were solicited and if not, why not; and (C) if applicable the reason award was not made to small and small disadvantaged business sources.
 - (iv) Records of any outreach efforts to contact trade associations, business development organizations, and conference and trade fairs to locate small and small disadvantaged business concerns.
 - (v) Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and monitoring performance to evaluate compliance with the program's requirements.
 - (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the Subcontractor to the University or the Government, including the name, address, and business size of each lower-tier subcontractor. Subcontractors having company or division-wide annual plans need not comply with this requirement.
- (e) To effectively implement this plan to the extent consistent with efficient subcontract performance, the Subcontractor shall do the following:
 - (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules to facilitate the participation by such concerns. When the Subcontractor's lists of potential small business and small disadvantaged lower-tier subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a given period.
 - (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all make-or-buy decisions.

- (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business concerns.
- (4) Provide notice to lower-tier subcontractors concerning penalties and remedies for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a lower-tier subcontract that is to be included as part or all of a goal contained in the Subcontractor's subcontracting plan.
- (f) A master subcontracting plan on a facility-wide or division-wide basis that contains all the elements, except goals, required by (d) above may be incorporated by reference as a part or all of a subcontracting plan required of the Subcontractor by this clause, provided that (1) the master plan has been approved, (2) the Subcontractor provides copies of the approved master plan and evidence of its approval to the University, and (3) goals and any deviations from the master plan deemed necessary to the University to satisfy the requirements of the subcontract set forth in the individual subcontracting plan.
- (g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the Subcontractor's production generally for both commercial and noncommercial products rather than solely to the subcontract. In these cases, and with the concurrence of the University, the Subcontractor shall submit one company-wide or division-wide annual plan.
- (2) The annual plan shall be reviewed for approval by the federal agency awarding the Subcontractor its first prime contract requiring a subcontracting plan during the fiscal year or by an agency satisfactory to the University.
- (3) The approved plan shall remain in effect during the Subcontractor's fiscal year for all of the Subcontractor's commercial products.
- (h) Prior compliance of the Subcontractor with other such subcontracting plans under previous subcontracts will be considered by the University's procurement specialist in determining the responsibility of the Subcontractor for award of the subcontract.
- (i) The failure of the Subcontractor or lower-tier subcontractor to comply in good faith with (1) the Utilization of Small Business and Small Disadvantaged Business Concerns clause or (2) an approved plan required by this clause shall be a material breach of the subcontract.

Clause F23 ³/₄ Subcontractor Cost or Pricing Data

- (a) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

- (3) Set by law or regulation.
- (b) The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement of the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (c) In each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, the Subcontractor shall insert either
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the lower-tier subcontract; or
 - (2) The substance of the Subcontractor Cost of Pricing Data - Modifications clause.

Clause F24 ³/₄ Subcontractor Cost or Pricing Data - Modifications

- (a) The requirements of paragraph (b) and (c) of this clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), and shall be limited to such modifications.
- (b) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (c) The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into.

Clause F25 ³/₄ Workplace Substance Abuse Programs at DOE Sites

- (a) **Program Implementation.** Consistent with 10 CFR 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, the Subcontractor shall develop, implement, and maintain a workplace substance abuse program

for performance of subcontracts involving access to or handling of classified information or special nuclear materials; high risk of danger to life, the environment, public health and safety, or national security; or transportation of hazardous materials to or from a DOE site.

- (b) **Remedies.** In addition to any other remedies available to the University, the Subcontractor's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Subcontractor subject to: suspension of subcontract payments, or, when applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) **Lower-tier Subcontracts.**
 - (1) The Subcontractor agrees to notify the University reasonably in advance of, but not later than 30 days prior to, the award of any lower-tier subcontract the Subcontractor believes may be subject to the requirements of 10 CFR Part 707.
 - (2) The University requires all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The University shall review and approve each Subcontractor's program, and shall periodically monitor each Subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.
 - (3) The Subcontractor agrees to include, and require the inclusion of the requirements of this clause in all lower-tier subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.